

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
ACTIVE CONSTRUCTION COMPANY,)
)
Appellant,)
)
vs.)
)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
)
Respondent.)

PCHB No. 110

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250 civil penalty for an alleged violation of respondent's outdoor fire rules (Section 9.02(b) of Regulation I), came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) in proceedings held at the Tacoma law offices of Burkey, Marsico, Rovai and McGoffin at 9:30 a.m., June 16, 1972.

Appellant was represented by Walter H. Smith, its president, and respondent appeared through its counsel, Keith D. McGoffin. Evan W. Aaron, a Seattle court reporter, recorded the proceedings.

The matter became a formal hearing after respondent indicated it

1 saw no possibility of a compromise settlement. Witnesses were sworn and
2 testified. Exhibits were admitted.

3 On the basis of testimony heard and exhibits examined, the Pollution
4 Control Hearings Board prepared Proposed Findings of Fact, Conclusions
5 and Order which were submitted to the appellant and respondent on
6 July 26, 1972. No objections or exceptions to the Proposed Findings,
7 Conclusions and Order having been received, the Pollution Control
8 Hearings Board makes and enters the following:

9 FINDINGS OF FACT

10 I.

11 Appellant, engaged in construction in the Gig Harbor area, has
12 frequent need of outdoor fires to dispose of natural vegetation in
13 connection with land clearing.

14 II.

15 With only two exceptions, appellant has had an enviable record of
16 cooperation in compliance with outdoor burning regulations of respondent.
17 In May of 1970, it was issued a Notice of Violation (with no civil
18 penalty invoked), but within two days of that Notice, appellant expressed
19 written regret of the violation, indicated it was not aware that it had
20 been in violation and requested copies of all regulations pertaining to
21 outdoor burning. Since that incident, and until the instant matter,
22 appellant had a 22 month record of consistent cooperation with respondent
23 in the obtaining of and observance of required burning permits. This
24 record won the praise of officials of respondent.

25 III.

26 On March 3, 1972, at a site on the Otto Jahn Road, near Gig Harbor,

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 Pierce County, appellant, operating under a valid burning permit issued
2 by respondent, was attempting to ignite a rain-soaked pile of natural
3 vegetation. He used rubber tires to encourage combustion.

4 IV.

5 On the face of the burning permit issued to appellant there is a
6 printed warning which says the permit is "void if the fires contain
7 tires . . ."

8 V.

9 Appellant admits the deliberate violation, expresses regret for it
10 and declares it was occasioned by extreme frustration at being unable
11 to get the soggy waste material to ignite. Since the instant matter,
12 appellant has purchased an approved wind machine to aid in obtaining
13 combustion, and has continued to burn in compliance with regulations
14 of appellant.

15 From these Findings, the Pollution Control Hearings Board comes
16 to these

17 CONCLUSIONS

18 I.

19 Appellant was in violation of Section 9.02(b) of respondent's
20 Regulation I on March 3, 1972.

21 II.

22 In view of the deliberate violation and in view of respondent's
23 policy of invoking civil penalties for a second Notice of Violation,
24 Notice of Civil Penalty No. 236, in the maximum allowable sum of \$250
25 is reasonable and proper.

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

1 III.

2 To err is human. And to err, admit it in all frankness and express
3 profound regret for an interperate act are factors worthy of consider-
4 ation, particularly if the record, over a long period of time, is void
5 of similar infractions.

6 From these Conclusions, the Pollution Control Hearings Board issues
7 this

8 ORDER

9 Notice of Civil Penalty No. 236 in the sum of \$250 is sustained and
10 the appeal thereto is denied. However, the matter is remanded to
11 respondent with the suggestion that immediate payment of \$100 by
12 appellant be required with the balance of \$150 suspended and collectable
13 only upon conviction of appellant of any subsequent violation of
14 respondent's Regulation I.

15 DONE at Washington, Washington this 30th day of August, 1972.

16 POLLUTION CONTROL HEARINGS BOARD

17 Matthew W. Hill
18 MATTHEW W. HILL, Chairman

19 James T. Sheehy
20 JAMES T. SHEEHY, Member |

21 Walt Woodward
22 WALT WOODWARD, Member

23
24
25
26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER